

This is an extract from:

*The Economic History of Byzantium:
From the Seventh through the Fifteenth Century*

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Published by

*Dumbarton Oaks Research Library and Collection
Washington, D. C.*

in three volumes as number 39 in the series

Dumbarton Oaks Studies

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Trustees for Harvard University

Washington, D.C.

Printed in the United States of America

www.doaks.org/etexts.html

Legal Institutions and Practice in Matters of Ecclesiastical Property

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An investigation of the system of law and actual practices in connection with ecclesiastical property is an essential component of an economic history of Byzantium in the middle and late periods (7th–15th centuries) because at that time the church had secured its position among the “powerful” (*dynatoi*) of the empire and its ownership of extensive assets, in particular large estates, had an impact on both the agrarian economy and the legislative policy of the emperors.¹ First, however, it must be noted that most of the legislative arrangements and practices that took shape during and after the middle period concerned monastic property, not ecclesiastical property in the broader sense. This should not be ascribed to any qualitative differentiation between monastic and other ecclesiastical property in the minds of legislators or society at large, but simply to the fact that it was the monasteries that had amassed most of the assets, and immovable property in particular. We are also familiar with the decisive role that monks and monasteries played in Byzantium, a fact that led H.-G. Beck to express the view that as early as the sixth century the empire had “become monasticized.”²

The transformation of the church into a landowner was the outcome of a lengthy

This chapter was translated by John Solman.

¹ The following are basic works of reference for a study of this subject: A. Knecht, *System des Justinianischen Kirchenvermögenrechtes*, (Stuttgart, 1905; repr. Amsterdam, 1963); P. Charanis, “The Monastic Properties and the State,” *DOP* 4 (1948): 53–118 (= idem, *Social, Economic and Political Life in the Byzantine Empire: Collected Studies* [London, 1973], art. 1); E. Wipszycka, *Les ressources et les activités économiques des églises en Egypte du IV^e au VIII^e siècle* (Brussels, 1972); I. M. Konidaris, *Τό δίκαιον τῆς μοναστηριακῆς περιουσίας ἀπὸ τοῦ 9ου μέχρι καὶ τοῦ 12ου αἰῶνος* (Athens, 1979); P. Lemerle, *The Agrarian History of Byzantium from the Origins to the Twelfth Century* (Galway, 1979); L. de Giovanni, *Chiesa e stato nel Codice Teodosiano: Saggio sul libro XVI* (Naples, 1980); S. Varnalidis, *Ὁ θεσμός τῆς χαριστικῆς (δωρεᾶς) τῶν μοναστηρίων εἰς τοὺς Βυζαντινοὺς* (hereafter *Χαριστικὴ δωρεά*) (Thessalonike, 1985); J. P. Thomas, *Private Religious Foundations in the Byzantine Empire* (Washington, D.C., 1987); M. Kaplan, *Les hommes et la terre à Byzance du VI^e au XI^e siècle: Propriété et exploitation du sol* (Paris, 1992); N. Svoronos, *Les Nouvelles des empereurs macédoniens concernant la terre et les stratiotes*, ed. P. Gounaridis (Athens, 1994). For further bibliographical references, see also the notes below, esp. note 23.

² H.-G. Beck, *Das byzantinische Jahrtausend* (Munich, 1978), 207: “Byzanz ist schon im 6. Jahrhundert ‘vermöncht.’”

process of evolution that began even before the triumph of Christianity and its recognition as the official religion of the state; the Christian communities exploited the provisions of Roman law concerning associations to build up assets, primarily out of the contributions of the faithful.³ As soon as the attitude of the state authorities began to become more favorable, ecclesiastical property grew constantly,⁴ benefiting from an advantageous legal framework that allowed ecclesiastical “juristic persons” to accept donations, inherit property even by intestate succession, enjoy longer time limits in the statutory limitation of their claims, and grow rich from the sanctions on property that had been introduced in favor of the church.⁵ On the other hand, although complete fiscal exemption for church lands was never recognized, they received special tax treatment that took the form of relief from the more onerous tax burdens (*munera, epereries*), of *exkouseia* for the *paroikoi*, of the payment of tax in installments, of extensions to the time limits for payment, and so on.⁶

Even at a very early date, the accumulation of all this wealth necessitated the introduction of restrictions on the freedom to manage the ecclesiastical property, a freedom that might easily lead to individuals enriching themselves. As far back as the mid-fifth century, canon 26 of the fourth ecumenical council made compulsory the appointment of an *oikonomos*, a managerial official who was answerable for his acts to the appropriate bishop,⁷ and in 787 the seventh ecumenical council confirmed this arrangement and stressed that the presence of an *oikonomos* was essential in monasteries, too, where he was answerable to the abbot (*hegoumenos*).⁸

In order to provide more effective protection for ecclesiastical property, the laws of both church and state prohibited disadvantageous and unnecessary sales or cessions, of all kinds, of ecclesiastical property. Exceptions could be made only where there was an obvious financial benefit, as in the case of property whose continued ownership by the church was unprofitable, or when the money was to be used for “charitable purposes”: to redeem prisoners, for example, or to help another church in need. A special procedure was applied to transfers of ownership of ecclesiastical property in order to

³ See M. Kaser, *Das römische Privatrecht*, 2d ed. (Munich, 1971), 1:308, and O. Heggelbacher, *Geschichte des frühchristlichen Kirchenrechts bis zum Konzil von Nizäa 325* (Fribourg, 1974), 209–16.

⁴ For the initial stages in this process, see F. Winkelmann et al., *Byzanz im 7. Jahrhundert: Untersuchungen zur Herausbildung des Feudalismus* (Berlin, 1978), 18–22.

⁵ See Knecht, *System*, 73–84, 86–92, 131–33; Konidaris, Δίκαιον, 55–76, 95–107, 111–15, and Kaplan, *Hommes et la terre*, 143–45.

⁶ See F. Dölger, *Beiträge zur Geschichte der byzantinischen Finanzverwaltung, besonders des 10. und 11. Jahrhunderts* (Leipzig–Berlin, 1927; repr. Hildesheim, 1960), 63–64; J. Karagiannopoulos, *Das Finanzwesen des frühbyzantinischen Staates* (Munich, 1958), 202–3; Konidaris, Δίκαιον, 222–36; Kaplan, *Hommes et la terre*, 554–55, 558–60; N. Oikonomides, *Fiscalité et exemption fiscale à Byzance, IXe–XIe s.* (Athens, 1996), 196–211.

⁷ See canon 26, fourth ecumenical council; Kaplan, *Hommes et la terre*, 152–55, 286–89. For details of the post of *oikonomos*, see V. Leontaritou, Ἐκκλησιαστικά ἀξιώματα καὶ ὑπηρεσίες στὴν πρώτη καὶ μέση βυζαντινὴ περίοδο (Athens, 1996), 352–435.

⁸ See canon 11, seventh ecumenical council. For the *oikonomoi* of the monasteries, see also Konidaris, Δίκαιον, 149–53, and idem, Νομικὴ θεώρηση τῶν μοναστηριακῶν Τυπικῶν (Athens, 1985) (hereafter Τυπικά), 205–10.

safeguard the interests of the foundation to which the property belonged. Sales of all kinds had to take place in a certain order, with the movable property being disposed of first, followed by the liquidation of the immovable property, starting with that which brought in the least revenue. The ownership of ecclesiastical things was to be transferred, preferably, to other church foundations, members of the clergy, or farmers, and certainly never to heretics or individuals who played some part in the management of ecclesiastical property or held state or military office in the area in which the immovable property was located.⁹ With the exception of Hagia Sophia and the charitable foundations of Constantinople, state legislation still expressly permitted exchanges of land among churches or monasteries or between them and the “imperial *oikos*.”¹⁰

Ecclesiastical property was inalienable in the general sense, including the charging of the assets with real rights such as mortgages.¹¹ Here, too, however, it was permitted for ecclesiastical things to be mortgaged or pledged in the event of economic need.¹² Separate mention should be made of *emphyteusis*, which was permitted in principle despite the fact that it constituted a real right charged on the property.¹³ Here, too, however, the same restrictions applied to the persons who were allowed to acquire ecclesiastical property in this way,¹⁴ and in the late Byzantine period it would seem that there was a trend for *emphyteusis* to be permitted only on property that was otherwise yielding no revenue.¹⁵ In the special case of property belonging to the churches of Constantinople, the law provided that this might be ceded only to a single person and to “two subsequent heirs” unless the property was “in ruins.”¹⁶ On the other hand, there was also a provision¹⁷ in accordance with which leases of ecclesiastical property might in no circumstances have a duration of more than thirty years. Since not only our sources for the practices employed but also the texts of the laws themselves contain information suggesting that the concepts of leasing (a personal right or right *in personam*) and *emphy-*

⁹ See, in the first instance, Novel 120 = *Bas.* 5.2.1–13; *Hexabiblos*, app. 4, 23; canons 26, 33, council of Carthage (with the commentaries of Zonaras, Balsamon, and Aristenos: Rhalles and Potles, *Σύνταγμα* 3:366–68, 390–92); canon 12 of the seventh ecumenical council (with the commentaries of Zonaras, Balsamon, and Aristenos: Rhalles and Potles, *Σύνταγμα* 2:592–611), and *Nomokanon in XIV Titles*, 10.4 (Rhalles and Potles, *Σύνταγμα* 1:239). See also the lengthy analysis of Konidaris, *Δίκαιον*, 254–58, and E. Papagianni, *Ἡ νομολογία τῶν ἐκκλησιαστικῶν δικαστηρίων τῆς βυζαντινῆς καὶ μεταβυζαντινῆς περιόδου σέ θέματα περιουσιακοῦ δικαίου* (Athens, 1992), 1:265–66.

¹⁰ See, in the first instance, Novel 120.7 = *Bas.* 5.2.7; Konidaris, *Δίκαιον*, 201–6, and Papagianni, *Νομολογία*, 265–66.

¹¹ See Konidaris, *Δίκαιον*, 254.

¹² See Novel 120.4 = *Bas.* 5.2.4, and cf. Papagianni, *Νομολογία*, 258–59, 262, 266–67.

¹³ *Emphyteusis* was one of the most onerous rights that could be placed on something belonging to another person—since it gave the *emphyteutes* the rights of free use of and profit from the thing, the sole restriction being that the thing should be returned unimpaired—and it was both heritable and alienable. For a bibliography on *emphyteusis*, see Konidaris, *Δίκαιον*, 196 n. 1, and Papagianni, *Νομολογία*, 210 n. 3.

¹⁴ See Konidaris, *Δίκαιον*, 197–98.

¹⁵ See Papagianni, *Νομολογία*, 265.

¹⁶ See, in the first instance, Novel 120.1 = *Bas.* 5.2.1; *Hexabiblos* 3.4.4; see also Konidaris, *Δίκαιον*, 195–201.

¹⁷ Novel 120.3 = *Bas.* 5.2.3; *Hexabiblos* 3.4.7.

teusis (a real absolute right or right *in rem*) were not always distinguished with complete exactness,¹⁸ the only general conclusion that can be stated here without risk of arbitrariness is that the ceding of the exploitation of ecclesiastical property could not be agreed to be *in perpetuum* but only as “subject to review” (*epanakamptikoi*), or, to use another term, “reversible” (*antistreptikoi*).

In practice it was more or less impossible to enforce a complete ban on the acquisition of real rights on ecclesiastical property. This can be seen in the manner in which the question of the charging of ecclesiastical property with the real rights called *servitude* was treated. In legal terminology, a *servitude* is a real right that can be acquired over a piece of property and that grants some benefit either to any owner of some other property (a *predial servitude*) or to a certain specified person (a *limited personal servitude*). Among common examples of servitudes were the right to cross land belonging to another person, the right to draw water from a well on land belonging to another person, the right to use the drainage system of the other property, and so on. It would seem from the decisions of ecclesiastical courts in the late Byzantine period that such rights could be acquired on ecclesiastical property when some consideration, such as a duty, was paid.¹⁹ The example that follows demonstrates that this was a practical solution that must have been arrived at by those who implemented the law. Let us suppose that on an ecclesiastical estate, of which there were very many in the Byzantine countryside, there was a well that was the only source of water for the adjoining properties. In such a case, compliance with the rules prohibiting the charging of ecclesiastical property with real rights would have been disastrous for the neighboring farmers, since in order to draw water from the well by right, at regular intervals and without impediment, a servitude to draw water would have to be established in favor of their properties and this could have constituted the charging of the ecclesiastical property with a real right in favor of a third party. Introduction of the payment of a duty—which was not a common practice in the more general exercise of servitudes, but as far as I am aware is encountered only when the property in question was ecclesiastical—enabled the church to demonstrate that it was not ceding its rights without benefit and made it possible for the agrarian economy to function normally.

As we have already seen, the foundation of the church’s assets was made up of the contributions of the faithful, and, when the emperors, too, joined the ranks of the faithful these donations increased in significance and extent. Apart from granting assets to preexisting ecclesiastical foundations, emperors, nobles, and even those of a middling financial competence began to found churches (and later monasteries), which they endowed with the appropriate assets. The legal framework that governed these relationships was called *ktetorikon dikaion* or *ktoreia*.²⁰ The *ktetor* (“founder”) had ad-

¹⁸ On this question, see Konidaris, Δίκαιον, 194, 200–201, and Papagianni, Νομολογία, 94, 215–16.

¹⁹ See Papagianni, Νομολογία, 266.

²⁰ See the old but classic study by J. von Zhishman, *Das Stifterrecht* (τὸ κτητορικὸν δίκαιον) *in der morgenländischen Kirche* (Vienna, 1888). Konidaris provides a more up-to-date analysis in Τυπικά, 35–43, with additional bibliography, and after him Thomas, *Foundations*, 253–62.

ministrative rights over the assets of the monastery or church, but was not entitled to appropriate them. On the other hand, the new ecclesiastical foundation remained perpetually under the control of the bishop, while the *ktetor* selected the personnel and was commemorated in church services. Although *ktetoreia* could be inherited and transferred, it was not—in theoretical terms, at any rate—to be conceived as ownership of the church or monastery. However, it has to be noted that the sources of the late Byzantine period suggest that the rights of *ktetores* of churches and other ecclesiastical foundations had lost much of their spiritual character by this time and were strongly reminiscent of the right of ownership.²¹

In general, the foundation of a church or monastery was seen as a work pleasing to God and deserving of praise; on the other hand, it was expressly and absolutely forbidden for ecclesiastical foundations, and monasteries in particular, to be transferred to laymen and converted into “secular abodes.”²² Those familiar with the reality of Byzantium realize the extent to which the practice of the *charistikion*²³ of monasteries, with all their property, in particular to laymen (*charistikarioi*), had spread, through the donations widely practiced by emperors, patriarchs, and bishops, especially in the period from the tenth to the twelfth century. It is clear that the prohibition, reiterated frequently not only in the canons but also in laws and legal textbooks,²⁴ did not apply in practice. Here, then, we are obviously dealing with a discrepancy between law and reality over a matter of prime importance for the Byzantine economy, that is, the question of the economic operation of the monasteries. To put things in their proper perspective, it has to be said that the institution of the *charistikion* was theoretically intended to support monasteries that had in many respects gone into decline and that some person of consequence had undertaken to assist.²⁵ Nor, indeed, was this a real donation in the narrow sense of the term, but rather a grant for a specific period of

²¹ On this matter, see E. Herman, “‘Chiese private’ e diritto di fondazione negli ultimi secoli dell’impero bizantino,” *OCP* 12 (1946): 302–21; Thomas, *Foundations*, 255–56; Papagianni, Νομολογία, 261–63.

²² Κοσμικὰ καταγωγή; see canon 24, fourth ecumenical council; canon 49, Penthekte; canon 13, seventh ecumenical council; canon 1, first/second council.

²³ See E. Herman, “Ricerche sulle istituzioni monastiche bizantine: Typika ktetorika, caristicari e monasteri ‘liberi,’” *OCP* 6 (1940): 293–375; Charanis, “Properties,” 73–81; J. Darrouzès, “Dossier sur le charisticariat,” in *Polychronion: Festschrift Franz Dölger zum 75. Geburtstag*, ed. P. Wirth (Heidelberg, 1966), 150–65; H. Ahrweiler, “Charisticariat et autres formes d’attribution de fondations pieuses aux Xe–XIe siècles,” *ZRVI* 10 (1967): 1–27 (= eadem, *Etudes sur les structures administratives et sociales de Byzance* [London, 1971], art. 7); P. Lemerle, “Un aspect du rôle des monastères à Byzance: Les monastères donnés à des laïcs, les charisticaires,” *CRAI* (1967) (= idem, *Le monde de Byzance: Histoire et institutions* [London 1978], art. 15); Konidaris, Δίκαιον, 258–63; Thomas, *Foundations*, 157–213. The term *charistike dorea* is not found in the sources, but *charistike* and *dorea* are used alternately. However, experts in this field have concluded that *charistike dorea* must have been the full name of the institution. See Varnalidis, Χαριστική (δωρεά), 36–37, with references to earlier bibliography.

²⁴ See Novel 120.7.1; *Eisagoge* 10.11 (Zepos, *Jus* 2); *Bas.* 5.2.9; *Epitome Legum* 8.5 (Zepos, *Jus*, vol. 4); *Eisagoge aucta* 8.13, 21.15; *Ecloga ad Prochiron mutata* 23.2 (Zepos, *Jus*, vol. 6); *Synopsis Minor* M 80 (Zepos, *Jus*, vol. 6).

²⁵ See Varnalidis, Χαριστική (δωρεά), 44, and Thomas, *Foundations*, 157.

time.²⁶ However, it soon became apparent that the *charistikarioi* often administered the monasteries in an abusive manner that damaged the interests of the church. After the end of the tenth century, various patriarchs and Emperor Alexios Komnenos I attempted to place restrictions on the more blatant cases, though without ever expressly abolishing the institution. After the twelfth century, it would seem that grants of *charistikion* to laymen dwindled or ceased altogether, probably being replaced by the institution of *ephoreia*, which sometimes involved usufruct on the monastery's assets or the collection of a part of its revenues by the *ephoros*.²⁷

If it is true to say that over the matter of the administration of ecclesiastical property there was some discrepancy between the rules the church itself had often instituted and the way in which they were implemented, then the imperial policy toward ecclesiastical property could be described as having two completely different faces. As a rule, the emperors were the church's greatest benefactors. Yet when they had to confront the fact that, little by little, the church had evolved into one of the greatest landowners in the state, they began, during and after the middle Byzantine period, to take measures to restrict its economic power.²⁸ Indeed, there is no shortage of cases in which the same emperor acted both as a benefactor of the church and as its opponent, always in the economic sphere. As we shall see, there was little consistency or continuity in the measures taken. The contradictions were so numerous and sharp that imperial policy where monastic property was concerned has aptly been described as "an absence of policy."²⁹

The first systematic and extensive measures to the detriment of ecclesiastical property were taken by the iconoclastic Isaurian dynasty, whose emperors dissolved monasteries and confiscated their property. It is characteristic that even before the upsurge in the persecution of the iconodules in which Constantine V was so ardent, the sanctions on property in favor of the monasteries provided for in Justinianic law³⁰ had been tacitly abolished by the *Ecloga* of Leo III. However, in the particular case of Leo it has to be borne in mind that this attitude was not the result of a more generally hostile attitude toward the church, but of his endeavor to restrict the power of the monasteries and the influence they wielded.³¹ Such efforts did not always have ideological motives; they might equally be manifestations of fiscal policy. Emperor Nikephoros I, for example, confiscated certain ecclesiastical estates purely and simply, it would seem, because his predecessor Irene had been excessively generous in her grants of such land.³²

²⁶ See Varnalidis, *Χαριστική (δωρεά)*, 51–58, and Thomas, *Foundations*, 157.

²⁷ See Konidaris, *Τυπικά*, 182–88; Thomas, *Foundations*, 218–20.

²⁸ See also Kaplan, *Hommes et la terre*, 282–86, 294–310.

²⁹ Konidaris, *Δίκαιον*, 142.

³⁰ See Novels 6.6, 117.13, 123.30, 43, and 134.10.11. According to these novels, property belonging to deaconesses or nuns who married or indulged in sexual relations, of adultresses, and of men and women who sought divorce without "lawful" cause was transferred to the monastery in which their confinement was mandatory.

³¹ On the above, see S. Troianos, "Bemerkungen zum Strafrecht der *Ecloga*," *Ἀφιέρωμα στό Νίκο Σβορώνο* (Rethymnon, 1986), 1:110.

³² See G. Ostrogorsky, *Geschichte des byzantinischen Staates*, 3d ed. (Munich, 1963); Lemerle, *History*, 56. Cf. N. Oikonomides, "The Role of the Byzantine State in the Economy," *EHB* 990.

Just as there can be no doubt as to the “orthodoxy” of Nikephoros I, or of his friendly attitude to monasticism, so his practical interest in the reconstruction of the state economy is also universally known. It is to this interest that we should attribute the fact that the *Eclogadion* (if, of course, we agree that this draft statute was drawn up between 802 and 811, during his reign),³³ despite its tendency to reinstate Justinianic law, did not reiterate the provisions connected with the sanctions in favor of the monasteries.³⁴

Various measures that had an adverse impact on any further increase in ecclesiastical property, and that were also aimed more immediately at restricting it, were taken between the ninth century and 1204 by emperors well known for their prochurch, and often promonastic, sentiments. The first relevant novel of an emperor of the Macedonian dynasty was issued in 934 by Romanos I Lekapenos³⁵ and expressly forbade, on pain of invalidity of the act in law, the acquisition, in any manner, of land belonging to peasants of limited economic power on the part of the *dynatoi*, a category that explicitly included metropolitan bishops, archbishops, bishops, and abbots, that is, the lawful representatives of the ecclesiastical provinces and the monasteries. The economic objectives of Romanos’ novel are revealed by its prohibition of the granting (*apotage*) of his land³⁶ by a peasant intending to enter a monastery, whereas a donation of the money value of the land to that foundation was permitted. The purpose of the law was not, however, only preventive: it also set about rectifying the injustices that had occurred during the famine of 927–928. For that reason it cancelled, retrospectively, the sales of land to the *dynatoi* that peasants had concluded at that time, though also decreeing that the cash received should be refunded.³⁷

The novel of Romanos I, which does not seem to have had notable practical results,³⁸ was directed against the *dynatoi* in a general sense, which, of course, also included the church. Yet it was Nikephoros II Phokas, that most devout of emperors, profoundly dedicated to ascetic ideals, who took the most effective measures against the church.

³³ This view has been expressed by S. Troianos (see below, note 34). F. Gorla held a different opinion, dating the *Eclogadion* between 829 and 870. On this question, see S. Troianos, *Οἱ πηγές τοῦ βυζαντινοῦ δικαίου*, 2d ed. (Athens, 1999), 127–28.

³⁴ See S. Troianos, “Ἡ διαμόρφωση τοῦ ποινικοῦ δικαίου στὴ μεταβατικὴ περίοδο μεταξύ Ἰσαύρων καὶ Μακεδόνων,” *Βυζαντικά* 2 (1982): 92.

³⁵ Svoronos, *Novelles*, 72–92 (= Zepos, *Jus*, 1:205–14); F. Dölger, *Regesten der Kaiserurkunden des oströmischen Reiches* (Munich–Berlin, 1924), no. 628. On the novel, see also Charanis, “Properties,” 55; Konidaris, *Δίκαιον*, 133–34; Lemerle, *History*, 94–97.

³⁶ These contributions made by prospective monks to the monastery were only permitted on a voluntary basis. Here, too, the real situation differed from the written rules. See Konidaris, *Δίκαιον*, 87–95.

³⁷ In 947, however, Constantine VII issued another novel (Svoronos, *Novelles*, 93–103 [= Zepos, *Jus*, 1:214–17]; Dölger, *Regesten*, no. 656), which, while in effect reiterating the measures provided for by the earlier law, was more lenient toward “the poorer monasteries” on condition that they had not conducted the purchase consequent to “violence and injustice.” It also provided that apart from the refunding of the price paid, the monasteries were also entitled to compensation for the expenditure they had incurred to improve the land. On this novel, see also Charanis, “Properties,” 55; Konidaris, *Δίκαιον*, 134–35; Lemerle, *History*, 97–98.

³⁸ See also note 37 above. See also the novel of Nikephoros II Phokas of the year 966/967 (Svoronos, *Novelles*, 177–81 [= Zepos, *Jus*, 1:253–25]; Dölger, *Regesten*, no. 712), which moderated the stipulations of the novel of 934.

In 963/4 he issued a novel³⁹ prohibiting donations of land to metropolitan and other bishoprics, to monasteries, and to ecclesiastical charitable institutions. In the specialized literature, the view that Nikephoros II took these measures to restrict the property of the monasteries because their vast estates were lying fallow and thus unproductive has found many advocates.⁴⁰ However, the reasons for his ban may have been more complex. As an ascetic himself, the emperor cannot have looked kindly upon the church in its role as landowner, and as a competent ruler acting on the basis of political and economic criteria he must have realized how counterproductive and harmful to the state it would be for wealth to accumulate in hands that would never pay the tax truly corresponding to its value. It was presumably for similar reasons that Nikephoros banned the founding of new monasteries and charitable institutions, with the exception of places of ascetic retreat (*lavrai* and *kellia*) in desert areas. The presence in such “deserts” of monastic foundations would, of course, encourage the development of the areas in question. Despite the views to the contrary stated in the past, it is now generally accepted that although the novel of 963/4 later fell into disuse, it was never rescinded by a subsequent law.⁴¹

The struggle between the *dynatoi* and the emperors of the Macedonian dynasty continued throughout the tenth century. Basil II issued a lengthy novel in 996⁴² in which he attempted to restore the novel of Romanos I, which, as we have already noted, does not seem to have had any particular impact on Byzantine economic life. The third section of this law dealt with the church and placed a ban on the appropriation by the bishoprics of the little *eukteria* (literally, “houses of prayer”) that peasants were in the habit of building, endowing with their property, and retreating to as monks. They might be joined in these foundations by a few more “rustics” (*choritai*) who wished to lead a life of asceticism and would grant their lands, too, to the foundation. It would seem that after the death of the founder the various agencies of ecclesiastical administrative power tended to convert these foundations into monasteries and bring them under their own control or to grant them, as *charistikia*, to the *dynatoi*. Basil II was not opposed to the exercise of control over spiritual matters on the part of the church (and, indeed, expressly permitted this in his novel), but what he was obviously trying to avoid was the accumulation of yet more assets by the church on the pretext of founding monasteries. The fact that these *eukteria* could only for reasons of expediency be termed monasteries is shown by the fact that, as a rule, their residents were very few in number. For that matter, the emperor exempted from his arrangement such *eukteria*

³⁹ Svoronos, *Novelles*, 151–61 (= Zepos, *Jus*, 1:249–52); Dölger, *Regesten*, no. 699. Cf. Charanis, “Properties,” 55–61; Konidaris, *Δίκαιον*, 136–37; Lemerle, *History*, 109–10; Thomas, *Foundations*, 151–53.

⁴⁰ On this subject, see Konidaris, *Δίκαιον*, 136 n. 17; Konidaris finds persuasive arguments that run counter to this view.

⁴¹ See Konidaris, *Δίκαιον*, 137; Lemerle, *History*, 110–11; Svoronos, *Novelles*, 185–89.

⁴² Svoronos, *Novelles*, 190–217 (= Zepos, *Jus*, 1:262–72); Dölger, *Regesten*, no. 783. On the novel, see also Charanis, “Properties,” 61–64; Konidaris, *Δίκαιον*, 138–39; Lemerle, *History*, 103–5, 112–14; Thomas, *Foundations*, 160–63.

as had more than eight monks and accepted that these foundations had become proper monasteries.

The method of augmenting ecclesiastical property described by the novel of 996 indicates that the church was a far from easy opponent even for the most powerful emperors. After the death of Basil II, a long period elapsed before a powerful monarch ascended the throne of Constantinople. Despite occasional measures against the church, described below, the eleventh and twelfth centuries were a period of triumph for the “feudal church.”⁴³ However, in the closing decades of the twelfth century, Manuel I Komnenos—another promonastic emperor—issued a series of edicts recognizing the rights of the church and granting it additional privileges, but at the same time he endeavored to restrict any further growth in monastic property.⁴⁴

On this policy of Manuel I, the historian Niketas Choniates wrote: “He so disapproved of the present situation where those who profess to be monks are richer in substance and more careworn than those who are fond of worldly pleasure that he revived the *novella* of that most excellent emperor of heroic prowess and great wisdom, Nikephoros Phokas, which prohibited the monasteries from increasing their properties but which eventually had become a dead letter and lost its authority, by appending his signature in red ink that, like blood, warms again and quickens with life.”⁴⁵ For the overall economic history of Byzantium, it is ultimately of little significance whether this extract refers to the few lines of a chrysobull issued in 1158—generally favorable to the monasteries—in which the acquisition by them of new property was banned,⁴⁶ or to a chrysobull of 1176 whose existence we know only from a reference in the commentary by the canonist Theodore Balsamon on canon 12 of the seventh ecumenical council, and which may have had a particularly detrimental effect on the monasteries.⁴⁷

⁴³ See Lemerle, *History*, 214–21.

⁴⁴ On the ecclesiastical policy of Manuel I, see N. Svoronos, “Les privilèges de l’Eglise à l’époque des Comnènes: Un rescrit inédit de Manuel Ier Comnène,” *TM* 1 (1965): 325–91 (= idem, *Etudes sur l’organisation intérieure de la société et l’économie de l’Empire byzantin* [London, 1973], art. 7); Thomas, *Foundations*, 224–28; P. Magdalino, *The Empire of Manuel I Komnenos, 1143–1180* (Cambridge, 1993), 276–309.

⁴⁵ *Nicetae Choniatae Historia*, ed. J. L. van Dieten (New York–Berlin, 1975), 207, lines 85–91, H. J. Magoulias, trans., *O City of Byzantium, Annals of Niketas Choniates* (Detroit, 1984), 117–18.

⁴⁶ Zepos, *Jus*, 1:381–85; F. Dölger and P. Wirth, *Regesten der Kaiserurkunden des oströmischen Reiches* (Munich, 1995), no. 1419. See Zepos, *Jus*, 1:384, lines 26–29: “nor will the monasteries be permitted, with regard to what they possess today, whether this be *paroikoi* or lands, or *autourgia*, to expand and increase the population thereof” (οὐδὲ γὰρ ἐπ’ ἀδείας ἔξουσιν αἱ μοναὶ τὰ σήμερον παρ’ αὐτῶν κατεχόμενα, εἴτε παροικοὶ εἶεν εἴτε τόποι εἴτε αὐτούργια, ἐπαύξειν καὶ εἰς πληθυσμὸν ἀγειν πλείονα). On this view, see Charanis, “Properties,” 81–85, 91–92.

⁴⁷ Rhalles and Potles, *Σύνταγμα* 2:603, lines 17–23: “For since, in accordance with the announcements of certain malicious persons, an imperial edict was issued in the month of June of the ninth indiction of the year 6684 almost reversing this most pious and beneficial chrysobull, by it all the monastery property was seized by the *anagrapheis*” (Ἐπεὶ δὲ ἐκ προσαγγελίας χαιρεκάκων τινῶν ἀπελύθη κατὰ τὸν Ἰούνιον μῆνα τῆς θ’ ἰνδικτιῶνος τοῦ ᾿ςχηδ’ ἔτους πρόσταγμα βασιλικόν, ἀνατρέπον σχεδὸν τὸ τοιοῦτον εὐσεβέστατον καὶ εὐεργετικώτατον χρυσόβουλλον, καὶ διὰ τοῦτο πάντα τὰ μοναστηριακὰ ἀκίνητα ὑπὸ τῶν ἀναγραφῶν ἠρπάζοντο) (cf. Zepos, *Jus*, 1:425; Dölger and Wirth, *Regesten*, no. 1523). For this point of view, see Lemerle, *History*, 217; Svoronos, “Les privilèges,” 372, 381–82.

What is incontrovertible, however, is that Manuel I must have been the last Byzantine emperor⁴⁸ who attempted to deal with the problem of ecclesiastical property—and of monastic property in particular—in its entirety and, without going to extremes, to prevent its excessive expansion in the future.⁴⁹

Apart from the measures, of varying degrees of strictness, taken against the church by emperors pursuing specific fiscal programs, there were also cases in which the state even went as far—for reasons of *force majeure*—as the confiscation of ecclesiastical property. The earliest known instance of this is connected with the ascent to the throne of Isaac I Komnenos in 1057. Isaac, who had been a military leader before becoming emperor, saw the need for reorganization of the military and, since he had no other sources of funds, confiscated church lands in order to carry it out. In this respect, of course, it is quite possible that he was modeling himself on the glorious military leaders of earlier times (notably Nikephoros Phokas) and that he had more general reforms in view, but in his era such action was difficult to take. In connection with the policy of Isaac, the view has been expressed in the literature that it contributed to the widespread dissemination of grants by *charistikion*, since the ecclesiastical authorities preferred to place their monasteries under the protection of powerful laymen so as to safeguard them against confiscation.⁵⁰ However this may be, Isaac abdicated and withdrew to a monastery only two years after his ascent to the throne.⁵¹

When Alexios I became emperor in 1081, he was faced not only with formidable external enemies such as the Normans, but also with the bankruptcy of the state. Among the measures to which he resorted was the sale of the holy vessels from the churches.⁵² This act, repeated more than once in the history of Byzantium,⁵³ provoked a strong reaction on the part of the church. The emperor thus issued a *chrysobull* denouncing his own act, undertaking the responsibility of making good to the churches what had been taken as soon as this was possible, and forbidding any repetition of such measures.⁵⁴ Nonetheless, in 1087 the emperor sold off more vessels in order to meet the needs of his campaign against the Pechenegs,⁵⁵ and it was not until 1095 that the conflict between the state and the church over the ecclesiastical treasures was resolved.⁵⁶

Regardless of whether or not the confiscation of these vessels, and of some monastic lands,⁵⁷ by Alexios I Komnenos actually contributed to improving the state's finances, the “century of the Komnenoi” was the last period of prosperity in Byzantium; until

⁴⁸ His son, Alexios II, did away with all restrictions; see Lemerle, *History*, 218.

⁴⁹ Cf. Konidaris, *Δίκαιον*, 141 n. 42.

⁵⁰ Ahrweiler, “Charisticariat,” 20–21.

⁵¹ For the historical events, see Ostrogorsky, *Geschichte*, 269–71; for details of the policy of confiscation, see Charanis, “Properties,” 67–68; Konidaris, *Δίκαιον*, 139–40.

⁵² See A. Glavinas, *Ἡ ἐπὶ Ἀλεξίου Κομνηνοῦ (1081–1118) περὶ ἱερῶν σκευῶν, κειμηλίων καὶ ἀγίων εἰκόνων ἔρις* (Thessalonike, 1972) (hereafter Ἐρις).

⁵³ See Glavinas, Ἐρις, 55–56.

⁵⁴ See Zepos, *Jus*, 1:302–4; Dölger and Wirth, *Regesten*, no. 1085, and Glavinas, Ἐρις, 73–80.

⁵⁵ See Glavinas, Ἐρις, 135–38.

⁵⁶ See *ibid.*, 179–93.

⁵⁷ Charanis, “Properties,” 70.

1204, it was not again necessary to turn to the church in search of funds. As for the Greek states of the period of Frankish rule, we have information about the adverse treatment of the metropolitan bishopric of Naupaktos by the civil authorities of the despotate of Epiros.⁵⁸ The period after the recapture of Constantinople was one of gradual decline, leading to a revival of the measures taken in the eleventh century. Of course, no more holy vessels were confiscated during the thirteenth and fourteenth centuries, but Emperors Andronikos II, John V, and Manuel II of the Palaiologan dynasty resorted to policies of confiscation of monastic lands in order to meet military needs.⁵⁹ Yet their measures, applied, as ever, on a limited scale, were not effective, and “the monasteries with their huge properties survived the state.”⁶⁰

⁵⁸ See K. Lampropoulos, *Ἰωάννης Ἀπόκαυκος: Συμβολή στήν ἔρευνα τοῦ βίου καί τοῦ συγγραφικοῦ ἔργου του* (Athens, 1988), 69–75.

⁵⁹ Charanis, “Properties,” 111, 114–17.

⁶⁰ Charanis, “Properties,” 118.